

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA
READING DIVISION**

In re: SHAWN M. AND SHANNON L. KEEN, Debtors	Chapter 13 Bankruptcy Bankruptcy No. 18-14109 REF
SHAWN M. AND SHANNON L. KEEN, Plaintiffs v. CONSUMER PORTFOLIO SERVICES, Defendant	Adversary Proceeding No.

**COMPLAINT SEEKING TO DETERMINE THE EXTENT AND VALIDITY OF
SECURED STATUS OF CREDITOR UNDER 11 U.S.C. § 502, 506**

Debtors and Plaintiffs, Shawn M. and Shannon L. Keen, by and through their counsel, George M. Lutz, Esquire and Hartman, Valeriano, Magovern & Lutz, P.C., hereby file this Complaint Seeking to Determine the Extent and Validity of Secured Status of Creditor Under 11 U.S.C. § 502, 506, and in support thereof set forth as follows:

PARTIES

1. Plaintiffs, Shawn M. and Shannon L. Keen, are the Debtors in the above-captioned Chapter 13 proceeding.

2. Defendant is Consumer Portfolio Services, a corporation doing business in the Commonwealth of Pennsylvania.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b) as a proceeding arising under the Bankruptcy Code.

4. The matters set forth in this Complaint are core proceedings and may be heard by a Bankruptcy Judge pursuant to 28 U.S.C. Section 157(b)(2)(A) and (K).

5. This is an action brought under those provisions of the Bankruptcy Code, 11 U.S.C. § 502(b) and 506(a)(d), allowing the Plaintiffs to determine the extent and validity of a certain lien allegedly held by Consumer Portfolio Services against the Plaintiffs' 2009 Kia Sportage automobile ("Automobile").

6. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1409.

7. The Plaintiffs owe the Defendant the sum of \$8,406.49 (the “Loan”).

8. The Defendant has filed a Proof of Claim (Proof of Claim No. 2), which sets forth a secured claim in the sum of \$8,406.49.

9. The Loan is secured by a security interest in the Automobile.

10. The contractual interest rate for the Loan is 21%.

11. Plaintiffs believe and therefore aver that the contract interest rate to be charged the Plaintiffs' is excessive and unreasonable and exceeds what is necessary to provide Defendant the secured value of its claim and should be reduced to six percent (6%).

12. Plaintiffs believe and therefore aver that the Automobile has a fair market value of \$5,275.00, as of the date of the filing of the bankruptcy petition, and that the present value of the Defendant's secured claim to be paid over the life of Debtors' Chapter 13 Plan is equal to \$5,275.00.

13. In order to pay the present value of \$5,275.00 over the life of the Chapter 13 Plan, at 6% interest, the Defendant would be paid a total of \$6,118.80.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to:

1. Determine that the fair market value of the Automobile as of the Petition Date is \$5,275.00;
2. Determine that the interest to be charged to Plaintiffs should be reduced to six percent (6%);
3. Determine that upon payment of the sum of \$6,118.80 through the Chapter 13 Plan, the Defendant's lien on the Automobile will be released;
4. Determine that the Defendant shall have an allowed unsecured claim for the balance of its provable claim.

Respectfully submitted,

Hartman, Valeriano, Magovern & Lutz, PC

by: /s/ George M. Lutz

**George M. Lutz, Esquire
1100 Berkshire Boulevard, Suite 301
Wyomissing, PA 19610
Pa. Attorney ID No.: 46437
Attorneys for Debtors**

EXHIBIT A

Fill in this information to identify the case:

Debtor 1 SHANE M KEEN

Debtor 2 SHANNON L KEEN
(Spouse, if filing)

United States Bankruptcy Court for the: Eastern District of Pennsylvania

Case number 18-14109

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	CONSUMER PORTFOLIO SERVICES Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____		
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? CONSUMER PORTFOLIO SERVICES Name PO BOX 57071 Number Street IRVINE CA 92619 City State ZIP Code Contact phone 800-342-9248 Contact email bankruptcy@consumerportfolio.com	Where should payments to the creditor be sent? (if different) Name Number Street City State ZIP Code Contact phone _____ Contact email _____	
Uniform claim identifier for electronic payments in chapter 13 (if you use one): -----			
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on MM / DD / YYYY		
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____		

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 9 8 9 9

7. How much is the claim? \$ 8,406.49. Does this amount include interest or other charges?

No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Money Loaned

9. Is all or part of the claim secured?

No
 Yes.

The claim is secured by a lien on property.

Nature of property:

Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: 2009 Kia Sportage VIN: KNDJF724497630488

Basis for perfection:

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ 8,406.49

Amount of the claim that is secured: \$ 8,406.49

Amount of the claim that is unsecured: \$ 0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ 0.00

Annual Interest Rate (when case was filed) 21.00 %

Fixed
 Variable

10. Is this claim based on a lease?

No

Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff?

No

Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

- | | Amount entitled to priority |
|---|-----------------------------|
| <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | \$ _____ |
| <input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). | \$ _____ |
| <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | \$ _____ |
| <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | \$ _____ |
| <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). | \$ _____ |
| <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(_____) that applies. | \$ _____ |

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it.
FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.
18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
 I am the creditor's attorney or authorized agent.
 I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
 I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/09/2018
MM / DD / YYYY

/S/ Janina Geronimo

Signature

Print the name of the person who is completing and signing this claim:

Name	JANINA GERONIMO		
	First name	Middle name	Last name
Title	BANKRUPTCY REPRESENTATIVE		
Company	CONSUMER PORTFOLIO SERVICES		
Identify the corporate servicer as the company if the authorized agent is a servicer.			
Address	PO BOX 57071		
	Number	Street	
	IRVINE		CA 92619
	City	State	ZIP Code
Contact phone	800-342-9248 Email <u>bankruptcy@consumerportfolio.com</u>		

OTHER IMPORTANT AGREEMENTS

Contract 141109 Ref Doc 22 Filed 20/09/18 07:04:12 PM Page 8 of 10 Date 14/11/18 14:51:46 Page 8 of 102

1. FINANCE CHARGE AND PAYMENTS Document

- a. **How we will figure Finance Charge.** We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- b. **How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose.
- c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. **You may prepay.** You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.

2. YOUR OTHER PROMISES TO US

- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, to the extent permitted by law you agree to repay the amount when we ask for it.
- c. **Security Interest.** You give us a security interest in:
 - The vehicle and all parts or goods put on it;
 - All money or goods received (proceeds) for the vehicle;
 - All insurance, maintenance, service, or other contracts we finance for you; and
 - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.

- d. **Insurance you must have on the vehicle.** You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our entire interest in the vehicle as well as yours. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we will buy insurance that covers your interest and our interest in the vehicle. We will tell you the charge you must pay. The charge will be the premium of the insurance and a finance charge computed at the Annual Percentage Rate shown on the front of this contract or, at our option, the highest rate the law permits. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- e. **What happens to returned insurance, maintenance, service, or other contract charges.** If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. **You may owe late charges.** You will pay a late charge on each late payment as shown on the front. The term "heavy commercial motor vehicle" means any new or used motor vehicle, excluding a recreational vehicle, which is (i) a truck or truck tractor having a manufacturer's gross vehicular weight of thirteen thousand (13,000) pounds or more, or (ii) a semi-trailer or trailer designed for use in combination with a truck or truck tractor. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments. If you pay late, we may also take the steps described below.
- b. **You may have to pay all you owe at once.** If you break your promises (default), we may demand that you pay all you owe on this contract at once. Default means:
 - You do not pay any payment on time;
 - You give false or misleading information on a credit application;
 - You start a proceeding in bankruptcy or one is started against you or your property; or
 - You break any agreements in this contract.The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.
- c. **You may have to pay collection costs.** If you default and we have to go to court to recover the vehicle, you will pay the reasonable attorney's fees and court costs as the law permits. You will also pay any attorney's fees and court costs a court awards us.
- d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

- e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may get it back by paying the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any other amounts lawfully due under the contract (redeem). Your right to redeem ends when we sell the vehicle. We will tell you how much to pay to redeem.
- f. **We will sell the vehicle if you do not get it back.** If you do not redeem, or, at our option, reinstate, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle.
- g. **What we may do about optional insurance, maintenance, service, or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, you agree that we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.
- h. **Summary Notice Regarding Prepayment, Rebate of Finance Charge and Reinstatement: You may prepay all or part of the amount you owe under this contract without penalty. If you do so, you only have to pay the earned and unpaid part of the finance charge and all other amounts due up to the date of your payment. Unearned finance charges will not be rebated under this contract because there will never be any unearned finance charges to rebate. If you default and we repossess the vehicle, we may, at our option, allow you to get the vehicle back before we sell it by paying all past due payments, late charges, and expenses (reinstate).**

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- i. **WARRANTIES SELLER DISCLAIMS** The following paragraph does not affect any warranties covering the vehicle that the vehicle manufacturer may provide. The following paragraph also does not apply at all if you bought the vehicle primarily for personal, family, or household use.
Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.
- j. **Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

- k. **SERVICING AND COLLECTION CONTACTS** You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

- l. **RIGHT TO RECEIVE STATEMENT OF ACCOUNT** Upon your request, we will provide you a statement of account that shows information about your payment history including any charges and credits to your account. It will also show amounts that are due at the time of your request and information regarding future payments. We will provide you one statement of account at no cost. We may charge you our reasonable costs for any additional statements requested, as the law allows. Your right to receive a statement of account ends one year after termination of the contract.

- m. **ADDITIONAL RIGHTS** If you encounter a problem, you may have additional rights under the Unfair Trade Practices and Consumer Protection Law, which is enforced by the Pennsylvania Office of Attorney General, Bureau of Consumer Protection.

- n. **APPLICABLE LAW** Federal law and the law of the state of the Seller's address shown on the front of this contract apply to this contract.



Collateral Management Services
9750 Goethe Road | Sacramento, CA 95827
www.dealertrack.com

CPS

Lien and Title Information

Account Information

Account Number		Financed Date	2/26/2015
Loan Number		Perfected Date	4/9/2015
Branch	764	Payoff Date	
Borrower 1	SHANE M KEEN	Dealer ID	
Borrower 2	SHANNON L KEEN	Dealer	
Borrower Address	4690 BUCKEYE RD EMMAUS, PA 18049	Dealer Address	

Lienholder

ELT Lien ID	33045913501
Lienholder	Consumer Portfolio Service Inc
Lienholder Address	PO Box 57071 Irvine, CA 92619

Lien Release Date

Vehicle and Titling Information

VIN	KNDJF724497630488	Issuance Date	4/9/2015
Title Number	74410623	Received Date	4/9/2015
Title State	PA	ELT/Paper	ELECTRONIC
Year	2009	Odometer Reading	65468
Make	KIA	Branding	
Model	SPO		
Owner 1	KEEN, SHANE M & SHANNON L		
Owner 2			
Owner Address	4690 BUCKEYE RD EMMAUS, PA 18049		

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Consumer Portfolio Services, Inc.

ACCOUNTING STATEMENT

Account No.: *****9899 Date: 7/9/2018

**SHANE M KEEN
SHANNON L KEEN**

Vehicle: 2009 Kia Sportage **VIN#:** KNDJF724497630488

COMPUTATION OF LOAN BALANCE

TOTAL CONTRACT OR AGREEMENT PRINCIPAL DUE: \$8,033.28

LATE CHARGES : \$40.40

ACCrued interest: \$332.81

ANSWER The answer is $\frac{1}{2}$. This is because the probability of getting a head on a single coin flip is $\frac{1}{2}$.

BALANCE DUE: \$ 8,406.49

This balance is due and payable within ten days of the date of this notice. If you are unable to pay the amount stated, contact with this office for other arrangements. Failure to respond will leave us no other alternatives but to continue with legal action.

P.O. BOX 57071 • IRVINE • CA 92619-7071
Toll Free: (800) 507-8843